IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) C.W.P.No.3753 of 1995

Harjeet Kaur.

..... Petitioner.

Versus

The State of Punjab and others.

..... Respondents

(2) C.W.P.No.6299 of 1999

Naresh Dubey

..... Petitioner.

Versus

The State of Punjab and others.

..... Respondents

(3) C.W.P.No.8365 of 1995

Shri Harpinder Pal Singh.

..... Petitioner.

Versus

The State of Punjab and others.

..... Respondents

(4) C.W.P. No. 11265 of 1995

Dr.Harish Malhotra.

..... Petitioner.

Versus

State of Punjab and others.

..... Respondents

Date of Decision: 8.11.2006

CORAM: Hon'ble Mr.Justice Mahesh Grover

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Present : Shri Rajiv Atma Ram, Senior Advocate with Ms.Manjari Nehru, Sarv Shri Arun Nehra, D.D.Gupta, N.K.Banka Advocates for the petitioners.
Shri A.G.Masih, Senior Deputy Advocate General, Punjab with Shri A.S.Ramgarh, Deputy Advocate General, Punjab for respondent nos. 1 and 2 in all the petitions.
Shri H.S.Mattewal, Senior Advocate with Shri Deepak Sibal, Advocate for respondent nos. 3 to 5 in all the petitions.
Shri D.V.Gupta, Advocate for respondent no.6 in all the petitions.
Shri Sanjiv Bansal, Advocate for respondent nos. 7 to 9 in C.W.P.No.6299 of 1995.

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Mahesh Grover,J.

This judgment shall dispose of all the above mentioned writ

petitions as common questions of law and facts are involved therein.

The petitioners have invoked the jurisdiction of this Court under Article 226/ 227 of the Constitution of India for issuance of a writ of mandamus directing respondent nos. 1 and 2 to place their names in Register `B' maintained under the provisions of the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 (hereinafter described as `the Rules') in order of the merit determined by the Punjab Public Service Commission (for short, `the Commission') for appointment to the Punjab Civil Service (Executive Branch) [for brevity, referred to hereafter as `P.C.S.(E.B.)] and appoint them accordingly. They have also prayed for quashing of appointments of the private respondents to P.C.S. (E.B.) being contrary to the Rules. In C.W.P.No.3753 of 1995, petitioner-Harjeet Kaur has additionally prayed for issuance of a writ of quo warranto for quashing of the appointment of respondent nos. 3 to 6 therein, i.e., Rajiv Prashar, Amarpal Singh, Vinay Bublani and Mohinder Pal.

Adverting to the facts briefly as set out by the petitioners and the respective respondents in their pleadings, it transpires that about 22 vacancies in the cadre of P.C.S.(E.B.) fell vacant which were required to be filled up by way of direct recruitment in accordance with Rules 12,13 and 14 of the Rules. However, requisition dated 4.6.1993 was sent by the State Government to the Commission for filling up of only 18 posts.

Since the petitioners have based their claim on Rules 12, 13 and 14 of the Rules, the same are reproduced below:-

“12. (1) A competitive examination, hereinafter called “the

examination", the regulations of which are contained in the Appendix II to these rules, shall be held at any place in the State of Punjab as and when notified by the Government through the Commission for the purpose of selection by competition of as many candidates for the Service as Government may determine.

(2)Notice of the date fixed for the examination shall be published in the Punjab Government Gazette.

13.(1) Applications for permission to sit in the examination will be called by the Commission and shall be made in the manner and form prescribed, and accompanied by such documents or papers as may be required by the Commission in this behalf.

(2) No person shall be allowed to appear in the examination--

(a) who has not attained the age of twenty-one years or who will have attained the age of twenty-seven years or who is beyond such other age limits as may be prescribed by Government from time to time, for entry into Service under the State, on or before the first day of January immediately preceding the last date appointed by the Commission for the submission of applications:

Provided that in the case of a candidate who belongs to Scheduled Castes or Backward Classes the upper age limit shall be such as many, from time to time, be fixed by the

Government in respect of entry into Service under the State of persons belonging to such castes or classes;

(b) who does not possess at least a bachelor's degree of a recognised University in Arts, Science or Commerce; and

© who does not by the closing date of receipt of applications to be notified by the Commission, send a treasury receipt or crossed Postal Order on account of a non-refundable examination fee as fixed by the Commission:

Provided that a Government servant holding a ministerial appointment under the Punjab Government including Courts, who has not less than four years' continuous service under the Government on the first day of January immediately preceding the last date appointed by the Commission for the submission of applications shall be eligible to appear in the examination if he possesses at least a bachelor's degree of a recognised University in Arts, Science or Commerce and has not attained the age of 38 years subject to the condition that he has not availed of three chances in addition to those which he might have already availed of in any other capacity.

Note.- Any person who is eligible as Government servant under this rule and wishes to appear in the examination, shall submit his application in the prescribed form through the Head of his Office, to the Secretary to the Commission.

14. Subject to the provisions of rule 13, Government shall

include in Register `B' in order of merit determined by the Commission, the names of such number of candidates as it may, from time to time, determined, from amongst those who have been declared as qualified in the examination by the Commission."

Rules 8 and 18 of the Rules which provide for maintaining various registers of the accepted candidates, as also determining the quota for filling up the posts from amongst the candidates whose names are entered in those registers, are also extracted below:-

"8. The following Registers of accepted candidates shall be maintained by the Chief Secretary to Government, Punjab, namely:-

(1)Register A-I in which shall be entered the names of Tehsildars and Naib-Tehsildars accepted as candidates;

(2) Register A-II in which shall be entered the names of temporary members of Class II and members of Class III Services serving in connection with the affairs of the State of Punjab and holding ministerial appointments accepted as candidates;

(3) Register A-III in which shall be entered the4 names of persons accepted as candidates from amongst Excise and Taxation Officers, Block Development and Panchayat Officers and District Development and Panchayat Officers serving in connection with the affairs of the State of Punjab;

(4) Register B in which shall be entered the names of persons accepted as candidates as a result of competitive examination; and

(5) Register C in which shall be entered the names of persons accepted as candidates from amongst officers or officials serving in connection with the affairs of the State of Punjab, who are not covered by any of the categories of officers or officials hereinbefore mentioned in this rule.

18. The Government shall make appointments to the Service in pursuance of rule 7 from amongst the candidates entered on the various Registers in a slab of 100 vacancies as follows:-

(i) the first vacancy and thereafter every alternative vacancy shall be filled from amongst candidates borne on Register `B'.

(ii) the 2nd, 8th, 14th, 20th, 26th, 32nd, 38th, 44th 50th, 56th, 62nd, 68th, 74th, 80th, 86th, 92nd, 96th and 100th vacancy shall be filled from amongst the candidates borne on Register A-I;

(iii) the 4th, 10th, 16th, 22nd, 28th, 34th, 40th, 46th, 52nd, 58th, 64th, 70th, 76th, 82nd, 88th and 98th vacancy shall be filled from amongst candidates borne on Register A-II.

(iv) the 12th, 30th, 42nd, 54th, 66th, 78th and 90th vacancy shall be filled from amongst the Excise and Taxation Officers accepted as candidates on Register A-III;

(v) the 18th, 36th, 60th and 84th vacancy shall be filled from amongst the District Development and Panchayat Officers or Block Development and Panchayat Officers accepted as

candidates on Register A-III; and

(vi) the 6th, 24th, 48th, 72nd and 94th vacancy shall be filled from amongst the candidates on Register `C'.

The petitioners have pleaded that as per the provisions of the Rules, quoted hereinabove, the quota of direct recruits is 50%, meaning thereby out of 22 vacancies, the quota for direct recruits should have been `11'. Four posts, according to them, were illegally taken out from the purview of the Commission and filled up on compassionate grounds by appointing Shri Rajiv Prashar, Shri Amarpal Singh, Shri Viney Bublani and Shri Mohinder Pal. They have pleaded that if 18 posts were advertised, then 9 posts fell to the share of the direct recruits. The reason for advertising only 18 posts, as given by the official respondents, was that although 6 posts were taken out of the purview of the Commission as per the decision taken by the Council of Ministers on 6.3.1993 for giving appointments to Sarv Shri Rajiv Prashar, Amarpal Singh, Viney Bublani, Mohinder Pal, Ms. Babita and Gurpreet Singh Khehra (Perhaps his name has been wrongly mentioned as Gurpal Singh – respondent no.8 in C.W.P.No.6299 of 1999) on compassionate grounds being wards of those killed in terrorists' violence in the State, yet, only Shri Rajiv Prashar, Shri Amarpal Singh, Shri Viney Bublani and Shri Mohinder Pal were adjusted against four posts belonging to general category, thereby reducing the number of posts of that category to `7'. According to the official respondents, one more post was also taken out of the purview of the Commission subsequently as per the decision dated 21.2.1994 of the Council of Ministers. For this, the Punjab Public

Service Commission (Limitation of Functions) Regulations,1955 were accordingly amended. After filling up four posts in the manner aforesaid, three more posts were taken out from the purview of the Commission by different decisions (dated 6.3.1993 and 21.2.1994) and filled up again on compassionate grounds against the vacancies which arose within six months of the selection made pursuant to the advertisement dated 19.6.1993. Thus, Sarv Shri Rajiv Prasher, Amarpal Singh, Viney Bublani, Mohinder Pal, Ms. Babita, Gurpreet Singh Khehra and Puneet Goyal (private respondents in the writ petitions), who are said to be the wards of the victims of the terrorists' violence in the State, were given appointments on compassionate grounds on all the seven posts taken out of the purview of the Commission reckoning them towards direct recruitment quota of general category.

The grievance of the petitioners is that the aforementioned posts have been wrongly given to the wards of the victims of the terrorists' violence because the only mode as given in the Rules for direct recruitment is by way of open competition coupled with other prescribed modes of nomination and promotions and the names of such persons are to be placed in Register `B' to be absorbed in P.C.S.(E.B.). Apart from this, they have averred that there are in force the government instructions dated 22.3.1957 under which the vacancies which occur within six months from the date of making of the recommendations were to be filled up from the merit list as prepared by the Commission which includes the waiting list after entering the names of such persons in Register `B' as per the Rules.

In the instant case, the advertisement dated 19.6.1993 for filling

up of seven posts of direct recruitment quota was issued and the results of the selection were made open on 7.11.1994. Petitioners – Naresh Dubey, Harpinder Pal Singh, Harjeet Kaur and Dr. Harish Malhotra, who applied for and appeared in the competitive examination held by the Commission, were placed at Sr. Nos. 8, 9, 10 and 11 respectively in the merit list of general category candidates. However, they were neither appointed nor were their names recommended for being entered in Register `B' because the advertised vacancies of the general category were only `7'. The petitioners have pleaded that the decision of the Council of Ministers to take seven posts of direct recruits quota out of the purview of the Commission and offering the same to the private respondents created a reservation in their favour which is arbitrary and against the dictum of the Supreme Court in Indra Sawhney etc. etc. Versus Union of India and others etc.etc., AIR 1993 S.C. 477 because the reservation of the posts has increased to more than 50% as against the quota of direct recruits in one recruitment year. They have further pleaded that appointments of the persons other than the candidates borne on the select list and the waiting list prepared by the Commission in pursuance to advertisement dated 19.6.1993 on the posts which fell vacant within six months thereof were contrary to the government instructions dated 22.3.1957 and are, therefore, liable to be quashed. The petitioners have contended that they being on the merit list at Sr. Nos. 8 to 11 are entitled to be appointed on the consequential vacancies.

The official respondents have not disputed the factual aspect of the matter and the only plea taken up is that the Council of Ministers had

taken a conscious decision on 6.3.1993 to take six posts of P.C.S.(E.B.) out of the purview of the Commission for being offered to the wards of those officers, who were killed in the terrorists' violence in the State. They have pleaded that after taking out of one more post from the purview of the Commission as per the decision dated 21.2.1994 of the Council of Ministers, the private respondents were given appointments on compassionate grounds in recognition of the services rendered by their parents in extremely difficult conditions prevailing in the State at the relevant time and in accordance with the government instructions dated 11.11.1993. Besides, the official respondents have questioned the right of the petitioners to challenge the appointments of the private respondents on the ground that they were fully aware of the decision of the State Government and since only seven posts had been advertised, they could confine themselves only to that extent.

The private respondents have filed separate written statements and justified their inclusion in P.C.S.(E.B.) as direct recruits on the ground that their parents had suffered at the hands of the terrorists during the turbulent period in the State.

The questions that arise for determination in the back-drop of the above facts are :-

(1)Whether the State was competent to take the posts of P.C.S. (E.B.) out of the purview of the Commission thereby effecting the quota of direct recruits adversely and if so, whether the power to do so had been exercised in

accordance with the Rules?

(2) Whether the appointments of the private respondents on compassionate grounds was in accordance with the Rules and justified keeping in view the relevant instructions and the dictum of the Apex Court?

(3) Whether the appointments of the private respondents are justifiable or not?

(4) Whether the petitioners have a justifiable case for being considered for appointment to P.C.S.(E.B.)?

Shri Rajiv Atma Ram, learned Senior Advocate appearing for the petitioners argued that even though, the State Government has the power to relax the Rules under Rule 28, yet, that power, in the instant case, was not exercised and the decision to take the posts out of the purview of the Commission was arbitrary. He contended that the only mode recognised for selection to the P.C.S.(E.B.) is provided under Rules 12 to 14 and 18 of the Rules in accordance to which the State Government is required to maintain various registers including Register `B' (for appointment by direct recruitment). Learned counsel urged that no other mode is prescribed for appointment to P.C.S.(E.B.) and hence, not recognised in the eyes of law. He argued that the appointments of the private respondents was in complete disregard to the dictum of the Supreme Court in Umesh Kumar Nagpal Versus State of Haryana and others, (1994) 4 S.C.C. 138. He further argued that the appointments on compassionate grounds given to the private respondents were not governed by any instructions and even the instructions

which are sought to be relied upon by the official respondents were not in existence when these appointments were made. Shri Atma Ram contended that even if, it is assumed that the instructions in question held the field, even then, the same could not apply in the instant case, as their benefit could only be extended to the dependents of the deceased employees and not to the dependents of the officers, who were drawing pay scale of Rs.2200-4000/- or above.

On the other hand, Shri A.G.Masih, learned Senior Deputy Advocate General, Punjab; Shri H.S.Mattewal, Senior Advocate assisted by Shri Deepak Sibal, Advocate; Shri Sanjiv Bansal and Shri D.V.Gupta, learned counsel for the respondents contended that in view of the fact that the State was passing through turbulent times, it was a unique measure to recognise the services of the officers, who served the State when the entire government machinery was tottering on collapse and, therefore, the petitioners have no right to challenge the appointments given to the private respondents on compassionate grounds. Learned counsel further urged that the State Government had taken a conscious decision to take the vacant posts of P.C.S.(E.B.) out of the purview of the Commission for being offered to the private respondents. They have also contended that the petitioners have not placed the appointment letters of the private respondents on record and so, the same may not be quashed, more so, because these respondents have been serving the State diligently for the last 12 to 13 years and it would be extremely harsh upon them if their appointments are now questioned. Reliance has been placed on a Division

Bench judgment of this Court in Parshotam Singh Versus State of Punjab and others, 1998(3) R.S.J. 290, with specific emphasis on paragraphs 25, 28, 29 and 31 thereof.

I have thoughtfully considered the respective submissions and have perused the relevant record which was summoned during the course of hearing with the assistance of learned Senior Deputy Advocate General, Punjab.

Undisputedly, a conjoint reading of the Rules reveals that the appointment to the posts of P.C.S.(E.B.) falling to the share of the direct recruits has to be made on the basis of the competitive examination. There is no other mode prescribed nor acceptable. An open competitive examination has been the most acceptable mode for determining the inter se merit of the aspirants. Under the Rules, after the open competition, all the successful candidates are entitled to have their names entered in Register `B' in order of the merit assigned by the Commission.

The selection to posts in the Services, like P.C.S.(E.B.) has to be on the strength of merit only to maintain an effective Public Service. “Baptism by fire” has no equal. Any other mode which deviates from the modes prescribed by the statutory rules implies not only depriving and restricting the claims of hopeful desirables, but also results in lesser than acceptable merit; as considerations alien to merit would form the basis for selection.

In the instant case, appointments of the private respondents on compassionate grounds were given on the following dates :-

1. Shri Rajiv Parashar - 28.5.1993
2. Shri Amarpal Singh - 28.5.1993
3. Shri Vinay Bublani - 28.5.1993
4. Shri Mohinder Pal- 16.6.1993
5. Ms.Babita - 24.1.1994/4.2.1994
6. Shri Puneet Goyal - 8.7.1994
7. Shri Gurpreet Singh Khehra- 29.4.1994

For the first time, the instructions for appointment on compassionate grounds were issued by the State Government on 11.11.1993, which were published in the official gazette on 22.11.1993. The relevant extracts of these instructions are reproduced below:-

> "3. Government has received representations from the dependent members of Class-I and Class-II officers,who have been killed in service for giving them appointments against PCS (Executive Branch) posts or other Class-I/ Class-II posts on priority basis keeping in view their socio-economic background.
>
> 4. Government have, therefore, been considering the whole matter afresh with the view to laying down a firm policy, so that all such cases are dealt with uniformly. After thorough consideration of the matter, Government have now decided that the dependent members of the families of the Government employees/ officers (including All India Service Officers), who are killed in terrorist violence or who

die in harness, while in service, may be given Government employment on priority basis as laid down in para 5 below.

5. All Government employees may be categorised into three categories as under on the basis of their pay scales for the purpose of officering Governing employment on compassionate grounds to the dependent members of the families of the Government employees,who are killed in terrorist violence or who die in harness, while in service:-

(i) Government employees placed in the scales of pay of Rs.5900-6700, and above;

(ii) Government employees placed in the scales of pay of Rs.2200-4000 and below the scale of pay of Rs.5900-6700;

(iii) Government employees placed in the scales of pay below the scale of pay of Rs.2200-4000.

NOTE:- The word `placed' means appointed regularly or promoted to posts having these pay scales.

Dependent family members of deceased Government employees falling in category No.(i) above may be offered appointments against Class-II posts of direct recruitment quota.

Dependent family members of the deceased Government employees falling in Category No.(iii) above, may be offered appointments against Class-IV posts of direct recruitment quota.

Dependent members of the families of the deceased

Government employees falling in category No.(ii) & (iii) above, who are eligible for appointment on priority basis, may be offered appointments against posts of higher category than the category of posts for which they are entitled to, provided they possess higher professional qualifications like graduation in Engineering, Medicine, Veterinary Science, Agricultural Science, Law and other equivalent professional degrees and Doctorates in Art and Science,i.e. They may be offered appointments against posts for which the above professional qualifications are prescribed, and they possess the same.

6. Such Class-I and Class-II posts may be deemed to have been taken out of the purview of the Punjab Public Service Commission, which are offered on compassionate ground under this policy. Necessary suitable amendments under Schedule `A' of the regulations and instructions governing the work of the Punjab Public Service Commission is being done separately."

Thus, the appointments of four of the private respondents, namely, Rajiv Prashar, Amarpal Singh, Vinay Bublani and Mohinder Pal were admittedly made before coming into force of the above mentioned instructions and as such, the plea of the official respondents that these appointments were governed by the government instructions was not tenable. The appointments in favour of other three private respondents, namely, Ms.Babita, Shri Puneet Goyal and Shri Gurpreet Singh Khehra were made after the decision in Umesh Kumar Nagpal's case (supra) and

were, therefore, straightway hit by the observations of the Supreme Court.

The attempt made by the respondents to say that three appointments were made prior to the judgment of Umesh Kumar Nagpal's case and hence, protected, is not tenable. A Division Bench of this Court decided this matter on 18.12.1992.The Petition for Special Leave to Appeal filed against the aforesaid decision was dismissed by the Supreme Court on 4.5.1994. Thus, the appointment of all three persons were made when the Division Bench judgment held the field and at least, one appointment was made after the judgment of the Supreme Court.

The principle governing the appointment on compassionate grounds is to enable the family of the deceased employee to tide over the financial crisis which it may face in the event of the loss of bread-winner and as has been observed by the Apex Court in Umesh Kumar Nagpal's case (supra), the consideration for such employment is not a vested right which can be exercised at any time in future. Their Lordships further observed that the object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The relevant portion of the judgment of the Supreme Court in Umesh Kumar Nagpal's case (supra) is extracted below:-

> “The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a

post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

In Punjab National Bank Versus Ashwini Kumar Taneja, (2004) 7 S.C.C. 265, the Apex Court held as under:-

"Appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

In a recent judgment reported as Union Bank of India and others Versus M.T.Latheesh, (2006) 7 S.C.C. 350, a two-Judges Bench of the Supreme Court reversed the judgment of the Kerala High Court whereby

it had directed the Union Bank of India and its authorities to appoint M.T. Latheesh on compassionate ground under the scheme formulated by the Bank as his father died during the course of employment. However, he was not found eligible and, therefore, his case was rejected. Thereafter, he approached the Kerala High Court of which the Single Bench as well as the Division Bench upheld his right to get employment on compassionate grounds. Their Lordships of the Supreme Court allowed the appeal of the Bank and set aside the orders of the Single Judge and that of the Division Bench of the High Court. Some of the observations made by the Apex Court are quoted below:-

> "It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family."

In the instant case, a perusal of the record reveals the reasoning adopted by the State Government while making the aforesaid appointments as reflected in the agenda of the meeting when the Council of Ministers took a decision on 6.3.1993. The extracts of the same read as under:-

> " (1) <u>In the case of Shri Rajiv Prashar.</u>
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> In order to rehabilitate the family of Shri N.C. Prashar, former Sub-Judge -cum- Judicial Magistrate, Jagraon, a written assurance was given to his son- Shri Rajiv Prashar that his

name would be considered for appointment to the Punjab Civil Service (Executive Branch) as and when he attains the minimum age for the purpose as prescribed in the Punjab Civil Service (Executive Branch) (Class-I) Rules,1976.

(2) In the case of Shri Amarpal Singh.

A request was received from the widow of Dr.Bachittar Singh, former Director Health and Family Welfare that her elder son -Amarpal Singh, presently employed as Veterinary Officer (Gazetted Class-II) might be nominated for appointment to the Punjab Civil Service (Executive Branch). Since Shri Amarpal Singh is serving under the State Government as Veterinary Officer since 1987, that is, well before the demise of his father, he cannot be said to be dependent upon his father. However, in case Shri Amarpal Singh is elevated to the Punjab Civil Service (Executive Branch) as a matter of honour to late Dr.Bachitter Singh, it will add to the status of the bereaved family.

(3) In case of Vinay Bublani.

In order to rehabilitate the bereaved family of late Shri Hari Om Bublani, a member of Punjab Civil Service, a written assurance was given that the State Government undertook to offer a post to his son, Shri Vinay Bublani in the Punjab Civil Service (Executive Branch) as and when he completes his graduation.

(4) In the case of Shri Mohinder Pal.

In order to rehabilitate his family, a written assurance was given to the widow of Shri Raj Pal Gupta, a member of Punjab Civil Service, former District Transport Officer, Sangrur that her son- Shri Mohinder Pal would be offered a post in the Punjab Civil Service (Executive Branch) when he completed his post-graduation, if he so applied.

(5) In the case of Ms.Babita.

In order to rehabilitate the family late Shri Gobind Ram, an I.P.S. officer, the Department of Home Affairs and Justice had proposed that his daughter, Miss Babita Bains, might be appointed to the Punjab and on consideration of this proposal, a written assurance was given to the family that she would be appointed to the Punjab Civil Service (Executive Branch) on attaining the requisite age and educational qualifications as prescribed in the Punjab Civil Service (Executive Branch) (Class I) Rules,1976.

(6) In the case of Shri Gurpreet Singh

After the death of Shri Joginder Singh Khaira, Superintendent of Police (Headquarters), Ropar, his widow made a request to the State Government that her elder son, Shri Gurpreet Singh, might be appointed to the Punjab Civil Service (Executive Branch) and accordingly, a proposal for his appointment was made by the Department of Home Affairs and

Justice and the Department of Personnel."

In the case of Shri Puneet Goyal, the Council of Ministers took decision on 21.2.1994 to appoint him in P.C.S.(E.B.) on the basis of the meeting note of the same date prepared by the Chief Secretary. The reasoning given in the agenda for making such appointment reads as under:-

> "Before the formulation of the new policy for giving appointments on compassionate grounds, a number of dependents of the deceased government employees had been appointed to the Punjab Civil Service (Executive Branch), with the approval of the Council of Ministers. On the basis of the past precedents, it is proposed to appoint Shri Puneet Goyal son of late Doctor R.N.Goyal, former Civil Surgeon, Ludhiana, to the post of P.C.S.(E.B.), on compassionate grounds, in relaxation of the policy instructions dated 11th November,1993, especially in view of the fact that formal decision to this effect was taken earlier vide C.M.'s order dated 31.7.1993, i.e., before the issuance of policy instructions dated 11.11.1993."

As noticed above, all the cases of the above appointees emanated from the assurances given by the functionaries of the State without taking into account either the Rules or any of the relevant considerations.

That apart, the Commission consistently opposed the exclusion of the posts from its purview, but the Department of Personnel rode rough-shod over the objections raised by it. The objection of the Commission in

one of the cases is reflected in the government's note dated 26.3.1992 wherein it had reportedly said that even though, there is sympathy with the victims of the terrorists' violence, yet, the State can do well to help them financially rather than taking the posts out of its purview as there was already an existing shortage of the posts of P.C.S.(E.B.). No reasons worth the name have been given in the entire decision making process as to why the objections of the Commission were ignored. The objection of the Commission as extracted in the note dated 26.3.2002 is in Gurumukhi, the English translation of which reads thus:-

> "The Commission while excluding one post of P.C.S. (Executive Branch) from the purview of Commission and considering the case of Sh. Rajiv Prashar son of Late Sh. N.C. Prashar, Judicial Magistrate -cum- Sub Judge, Jagraon, District Ludhiana for providing job, has observed that the Commission does not agree with the proposal of the Government. The Commission has also observed that it has full sympathy with the terrorists affected families. But, since the posts of Class-I and Class-II are already short in the State and as such, the exclusion of the said posts from the purview of the Commission would have adverse effect on the future of the candidates from the category of direct recruits. Hence, the Government should give maximum financial help to terrorists affected families."

The public appointments are meant for the benefit of the public. The persons, who have proven themselves on the touch-stone of merit are

the only ones, who are entitled to occupy such posts. The State cannot hand them out as doles. The entire decision making process leading to the appointments of the persons aforesaid reflects ad hocism with no coherent policy to justify the appointments to meet the situations which formed the basis of the said appointments.

The only justifiable concept behind making appointments on compassionate grounds is to help the family of the deceased from financial penury and the object stood defeated in the instant case, as the incumbents were not appointed immediately on the death of their bread-winners. The observations of the Supreme Court in Umesh Kumar Nagpal's case (supra) are, therefore, attracted in all ferocity and intensity to the facts of the present case.

The written statements filed by the official respondents and the records reveal a shocking lack of application of mind and it is apparent that the State has put on a cloak of compassion in order to distribute largesse to the chosen few. The reasons for appointment of Amarpal Singh as given in para 14-B of the written statement of official respondent no.1 filed in C.W.P.No.6299 of 1999 establish the ulterior considerations which weighed on the mind of the State while making such appointment. It has been stated in para 14-B(a) as under:-

> "The contents of this sub-para are self-contradictory. On the one hand, the petitioner has stated that the appointment of Amarpal Singh (respondent No.4) was made in June,1993 while on the other, it has been alleged that this is against the

instructions dated 11.11.1993. These instructions are operative prospectively and not retrospectively. Prior to the notification dated 28.5.1993, the veterinary officers were members of Class-II and not Class-I Service. However, it is true that prior to the death of his father Dr. Bachhiter Singh, Director Health Services, Punjab who fell victim to terrorist violence, Amarpal Singh was serving under the State Government in the Animal Husbandry Department and, therefore, was not dependent upon his father. At that time of taking the matter to the Council of Ministers for taking 6 posts of the service out of the purview of the Commission, the above fact was duly brought to its notice. However, it was considered appropriate that in case Amarpal Singh is elevated to the service as a matter of honour to his father late Dr.Bachhitter Singh, it will add to the status of the bereaved family." (Emphasis supplied)

Besides, in paragraph 26 of the written statement of the official respondents filed in C.W.P.No.11265 of 1995, the circumstances leading to the appointment of Sarv Shri Rajiv Parashar, Amarpal Singh,Viney Bublani and Mohinder Pal have also been detailed.

The perusal of the written statements of the official as well as private respondents shows that it has been pleaded that the appointments of the private respondents were made by exercising the powers of relaxation of the State Government under Rule 28 of the Rules. However, decisions dated 6.3.1993 and 21.2.1994 taken by the Council of Ministers reveal that

no conscious decision was taken by the State Government to exercise the powers by invoking Rule 28 of the Rules, which reads as under:-

> "28. Where the State Government is of the opinion it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

In view of the above, decisions dated 6.3.1993 and 21.2.1994, which have not been based on valid reasons as is the requirement of Rule 28 of the Rules, can, at the best, be termed as arbitrary. It is a bounden-duty of the State Government to formulate decisions based on reasons and justifiable logic when it decides to deviate from the statutory rules. The rules once framed under proviso to Article 309 of the Constitution of India have to be strictly adhered to and even if the power of relaxation has been provided therein, the same is to be exercised cautiously on well sounded principles and reasoning which can withstand judicial scrutiny. The State cannot bestow any benefit to an individual which has the effect of affecting rights of others adversely without basing its decision on relevant considerations which are to be reflected in the decision making process. Taking of certain posts of P.C.S. (E.B.) out of the purview of the Commission has resulted in excessive reservation and has depleted the quota of the direct recruits thereby violating the dictum of the Apex Court in Indra Sawhney's case (supra). No matter, how laudable the object be, yet, the provisions of the Rules cannot be ignored. Illegality in matters of public appointments is a negation of the rules framed under proviso to

Article 309 of the Constitution of India.

Knighthood is conferred upon persons, who are tested by the edge of the sword that bestows the honour on the knighted and not handed out as a dole.

In Principal, Mehar Chand Polytechnic and another Versus Anu Lamba and others, (2006) 7 S.C.C. 161, the Apex Court, while dealing with a case of regularisation of ad hoc/ temporary employees not appointed in terms of any statutory rules and/ or upon compliance with the requirements envisaged under Articles 14 and 16 of the Constitution of India, observed as under:-

> " Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefor emanates from the statutes or statutory rules and/ or rules framed under the proviso appended to Article 309 of the Constitution of India. The recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment to the vacant posts."

In view of the above, the decisions of the State Government to take the posts of P.C.S.(E.B.) out of the purview of the Commission in order to make appointments on compassionate grounds are totally arbitrary and violative of Articles 14 and 16 of the Constitution of India. Besides, there are no sustainable reasons as to why Class-I posts were chosen to be

given to the wards of the terrorists' affected families. There was absolutely no coherent policy in place to by-pass the merit for appointment to Class-I posts. Incalculable harm can be caused if the rules which lay down the criteria of selection on merit are by-passed in favour of the appointments made in the manner aforesaid. The appointments of the private respondents on Class-I posts are, therefore, totally unjustified. The State had the option to compensate the concerned families in terms of money in recognition of the services rendered by the slain officers.

Even otherwise, the petitioners were entitled to be considered for appointment against the vacancies which arose within six months of the making of the recommendations in accordance with the government instructions dated 22.3.1957 and the judgment of the Supreme Court in Virender Singh Hooda Versus State of Haryana and others, 1999(4) R.S.J. 198, wherein, while dealing with the same instructions,observed as under:-

> "When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

The official respondents have not disputed the government instructions, but have only sought to justify the appointments of the private respondents made on the ground that they were made to accommodate the dependents of the victims of the terrorists' affected families. I am afraid,

such a reasoning is unacceptable. `Robbing Peter to pay Paul' can never be the principle of administering justice.

An attempt was made by the official respondents to contend that the appointment of the private respondents cannot be quashed because the appointment letters have not been placed on record. The contention is not tenable in view of the fact that in one of the writ petition, i.e. C.W.P.No.3753 of 1995, the petitioner-Harjeet Kaur has also prayed for issuance of a writ of quo warranto and if on the first principle, the appointments of the private respondents is not in accordance with the Rules and are based on considerations which are unsustainable in the eyes of law, the logical consequences have, but to follow. The appointments of the private respondents being made on invalid considerations and being contrary to the Rules are, therefore, quashed.

The private respondents have, however, pleaded equity to contend that they have been in service for a fairly long time and dislodging them from the present posts would be unduly harsh. There is no doubt about this fact. Therefore, this Court deems it fit to express its desire that since the private respondents,who were appointed by creating a special class of reservation on compassionate grounds, the State Government, in its wisdom, may absorb them elsewhere as per their entitlement under the relevant instructions, which were/ are applicable and the rules, by exercising any other enabling power that may be available to it, but which does not have the effect of defeating or affecting the rights of the petitioners. While doing so, special regard may be had to the fact that the

private respondents have served the State for a long period and it is a situation of the respondent-State's own making.

The petitioners, in turn, shall be entitled to get their names entered in Register `B' as per the provisions of the Rules to be considered for appointment to P.C.S.(E.B.) for which they had competed and would have been appointed had the posts not been taken out of the purview of the Commission or for that matter, under the instructions dated 22.3.1957 under which the vacancies occurring within six months of the recommendations were to be filled from amongst the list prepared by the Commission on the basis of the merit.

As a result, the writ petitions are allowed in the manner indicated hereinabove with no order as to costs.

November 8,2006 (Mahesh Grover)
"SCM" Judge